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IN THE

Supreme Court of the United States

October Term, 1960

No. 164

WILLIAM H. BURTON,

Appellant,

—v.—

THE WILMINGTON PARKING AUTHORITY, a body corporate and politic of the State of Delaware, and

EAGLE COFFEE SHOPPE, INC., a corporation of the State of Delaware,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF DELAWARE

APPELLANT'S BRIEF AND APPENDIX

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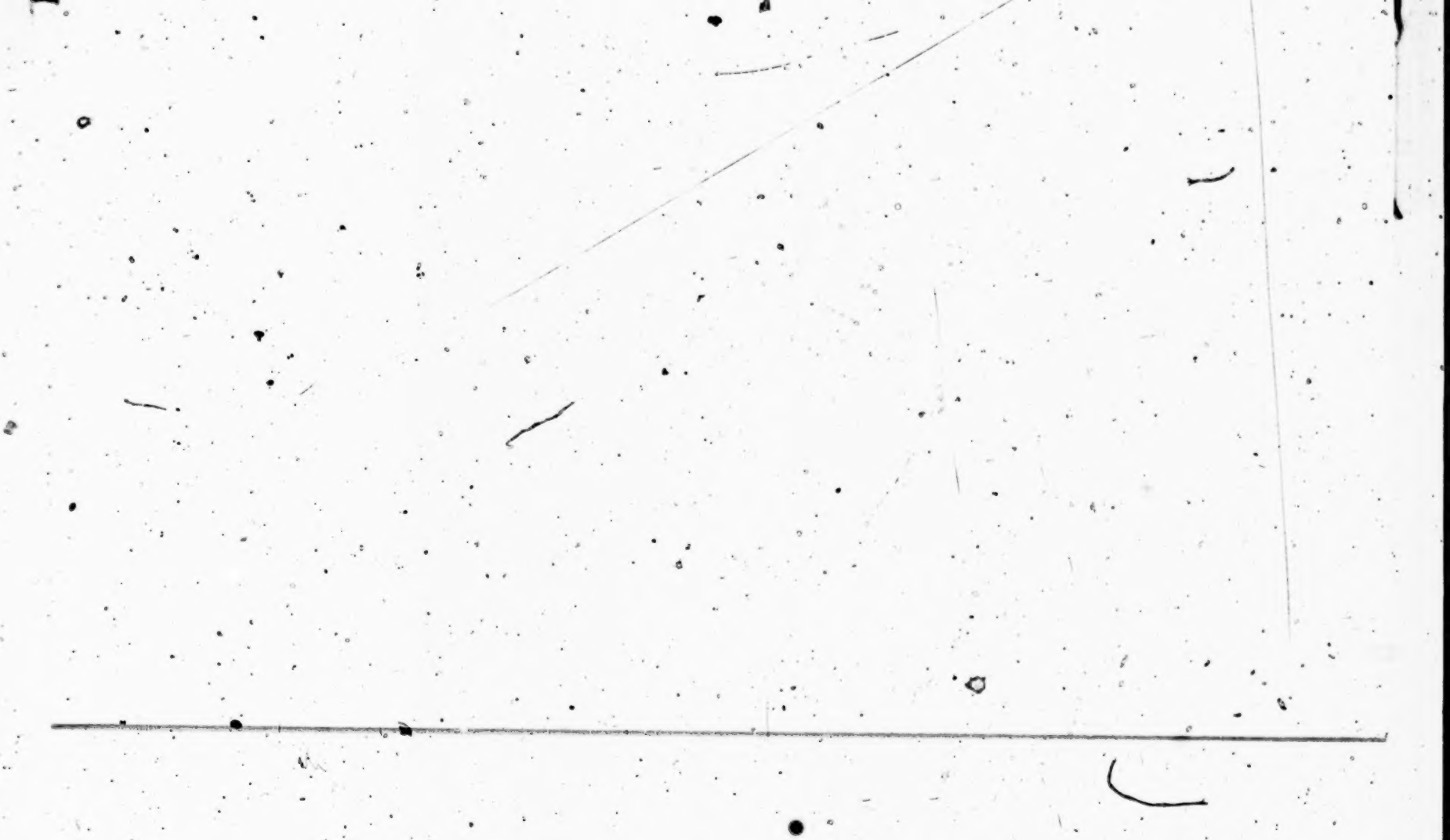

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF DELAWARE

APPELLANT'S BRIEF

Opinions Below

The opinion of the Supreme Court of Delaware is reported at 157 A. 2d 894 (1960) (R. 42-54). The opinion of the Court of Chancery of the State of Delaware, in and for New Castle County, is reported at 150 A. 2d 197 (1959) (R. 36-39).

Jurisdiction

Appellant brought a class action in the Court of Chancery of the State of Delaware for a declaratory judgment and injunctive relief against Wilmington Parking Au-

thority, a public agency of the State of Delaware, and its lessee, Eagle Coffee Shoppe, Inc., a Delaware corporation, to restrain, as a denial of equal protection of the law secured by the Fourteenth Amendment, the racially discriminatory refusal of food service to him in a restaurant operated in a public parking facility maintained by the Authority in downtown Wilmington.

The judgment of the Supreme Court of Delaware, reversing the declaratory judgment and injunction granted by the Court of Chancery, was entered on January 12, 1960, and on February 4, 1960, without opinion, the Supreme Court of Delaware denied reargument. Notice of appeal to this Court was filed in the Supreme Court of Delaware on April 28, 1960, and the jurisdictional statement of appellant was filed in this Court on June 22, 1960. On October 10, 1960, this Court postponed further consideration of the question of jurisdiction to the hearing of the case on the merits. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(2).

Questions Presented

1. Whether this Court has jurisdiction of the appeal.

2. Whether the court below is involved in state action repugnant to the Fourteenth Amendment when it construes a state statute, which on its face imposes no racial test, as authorizing racial discrimination in a state-owned public facility.

3. Whether the court below, by assuming facts outside the record of the case and failing to recognize the interrelationship of a public lessor of a state-owned public facility with its lessee, improperly absolves the lessor of the duty to accord equal protection of the laws.

Statutes Involved

This case involves the validity of Title 24, Delaware Code of 1953, §1501, as construed and applied in this case by the Supreme Court of Delaware to authorize racial discrimination. The text of the statute is as follows:

> §1501. Exclusion of customers; definition
>
> No keeper of an inn, tavern, hotel, or restaurant, or other place of public entertainment or refreshment of travelers, guests, or customers shall be obliged, by law, to furnish entertainment or refreshment to persons whose reception or entertainment by him would be offensive to the major part of his customers, and would injure his business.
>
> As used in this section, "customers" includes all who have occasion for entertainment or refreshment.

Title 22, Delaware Code of 1953, Chapter 5, also pertinent, but the validity of which is not involved, is reprinted in the Appendix, *infra*, pp. 19-45.

Statement

Appellant, a Negro, resident in Wilmington, Delaware, on August 14, 1958, parked his automobile in the public parking structure of appellee Wilmington Parking Authority (Authority) and then proceeded into a restaurant operated in the parking facility, or building. There he sought food service and was refused, solely because of his race (R. 1-3, 28-29, 37, 43).

The Authority is a public body corporate and politic, established by the City of Wilmington, pursuant to 22 Delaware Code, Ch. 5 (Appendix), to construct and oper-

ate a facility for off-street parking of automobiles. The statute declares that the purposes for which a parking authority shall exist and operate are "public" uses. The Authority has the power of eminent domain. The land on which the facility is erected, however, was acquired through negotiated purchases, the purchase money coming from three sources: revenue bonds issued on the credit of the Authority, cash donated by the City of Wilmington, and a bank loan to the Authority (R. 12). Later, the City of Wilmington gave the Authority $1,822,827.69, which was applied to redemption of revenue bonds and to repayment of the bank loan (R. 12). The structure itself was erected solely from the proceeds of the Authority's revenue bonds (R. 1-2, 5, 7, 11-13).

Section 504(a) (Appendix, p. 23) of the act under which the Authority is established provides that the Authority may lease portions of the first floor of the facility for commercial use where such leasing is necessary and feasible for the financing and operation of such a facility. The Authority is required to be financially self-sustaining. See *Wilmington Parking Authority* v. *Ranken*, 34 Del. Ch. 339, 105 A. 2d 614, 622 (1954). The Authority determined that it would be feasible to erect and operate the structure only if, in addition to fees from parking, there was income from commercial leasing of space in the structure (R. 2, 5, 7, 12).

Appellee Eagle Coffee Shoppe, Inc. (Eagle) leased from the Authority certain space in the building in April, 1957, for twenty years, with an option to renew for an additional ten years (R. 2, 5, 7, 14, 26). This lease required Eagle to operate a restaurant, dining room, banquet hall, cocktail lounge and bar and to engage in no other business (R. 21). Eagle covenanted to "occupy and use the leased premises in accordance with all applicable laws . . . of any federal,

state or municipal authority" (R. 19). The Authority has the right, under the lease, to enforce its provisions in strict accordance with its terms (R. 25).

Appellant, on August 20, 1958, filed in the Court of Chancery his complaint against the Authority and Eagle, alleging that the Authority, "acting through the instrumentality of its lessee," Eagle, "using and occupying a portion of said public facility," had refused food service to appellant, solely because of his race, color and ancestry. The complaint alleged this refusal to be conduct of an agency of the State of Delaware depriving appellant of the equal protection of the laws, in violation of the Fourteenth Amendment (R. 1-4).

When the Vice Chancellor rendered the decision of the Court of Chancery, there had been filed in that court the complaint, answers by both appellees, including an admission by Eagle that appellant was refused service in the restaurant only because of his race (R. 28-29), motions for summary judgment by the Authority and Eagle, a countermotion for summary judgment by appellant, and affidavits in support of the motions. Appellees' motions set forth, in essence, two grounds as the basis for summary judgment: (1) that operation of the restaurant in the parking facility was the private business of Eagle and independent of control by the Authority; 2) that under 24 Delaware Code §1501, *supra*, Eagle was permitted to refuse service to appellant (R. 9-11).

The Vice Chancellor denied appellees' motions and granted appellant's. He concluded that because rental income was a substantial and integral part of the means of financing this "vital public facility," the Authority was obligated to enter into leases which would require the tenant to carry out the Authority's duty under the equal protection clause. He deemed the Fourteenth Amendment to ap-

ply to the operation of all aspects of the structure and to forbid racial discrimination in the restaurant. Having thus decided, the Vice Chancellor stated it was not necessary to consider appellees' reliance on 24 Delaware Code §1501 (R. 39).

The Supreme Court of Delaware, on appeal by the Authority and Eagle, was of the opinion (R. 42-54) that the only concern the Authority had with Eagle was the receipt of rent, "without which it [the Authority] would be unable to afford the public the service of off-street parking." It concluded that Eagle's discriminatory act was not that of the Authority; it deemed Eagle to be acting in a "purely private capacity." The record contained no evidence of appellant's offensiveness to other customers or of injury to business, requisites under the terms of the statute to bring it into operation, but the record did contain appellees' admission that service was refused appellant only because of his race. Conjoined with this was appellees' briefed argument that, dispensing with proof, judicial notice could be taken of the offensiveness of members of the class to which appellant belongs. In this state of the record, the court below held that 24 Delaware Code §1501 applied and authorized Eagle to refuse to serve appellant; and the court reversed the Vice Chancellor.

As the gravamen of the complaint, appellant sets up, or claims, a federal right, in that he alleges that the Authority, a public agency of the State of Delaware, acting through the instrumentality of its lessee, Eagle, in refusing appellant food service in the restaurant located in the governmentally-owned public facility, solely because of race, violated appellant's right to constitutional equal protection of the laws.

Secondly, a federal question was raised by appellant in the trial court on appellees' motions for summary judgment claiming that the statute permits refusal of service to ap-

pellant, a Negro, on the ground of race (R. 9, 10). Appellant's brief, in reply, which was the mode appropriate under Delaware practice to raise the issue, argued that:

> "[I]f the statute . . . be regarded as giving carte blanche authorization to the keeper of an inn or other place of public entertainment mentioned in the section to make discriminatory regulations based on race or color alone, this would not be private action, immune from the Fourteenth Amendment, but discriminatory state action which is barred by that Amendment."

In the Supreme Court of Delaware, the constitutional validity of the statute was again drawn into question by this appellant on appeal by the Authority and Eagle from the Vice Chancellor's decision. On that appeal, the Authority's brief made a contention based on the statute and identical with that advanced in the trial court in appellees' joint brief. Again, in the Supreme Court, appellant's brief insisted that if the statute be construed as authorizing a restaurateur to discriminate because of race, the legislation would be discriminatory state action which the Fourteenth Amendment prohibits. However, the Supreme Court of Delaware

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[1] In accordance with Delaware practice, appellees' motions were briefed and orally argued. The joint brief of the Authority and Eagle made the point, stated verbatim, that: "A Delaware innkeeper may refuse service to Negroes by reason of the provisions of 24 Delaware Code of 1953 Section 1501." This was developed to support one of the two grounds on which the Authority's motion for summary judgment was based.

[2] The Authority's brief gave recognition of the necessity under the statute of establishment of operative terms of the statute, viz., "offensive to the major part of his customers" and injury to business and argued that "no issue of fact is raised by application of Section 1501 because this Court can take judicial notice whether a member of a class is offensive to a 'major part' of Eagle's customers. The rule of judicial notice is a judicial short cut which dispenses with proof of a notorious and self-evident fact."

held the Authority not answerable for the admitted racial discrimination; and it construed and enforced the statute as authorizing exclusion of appellant because of race.

Summary of Argument

A statute of the State of Delaware relieves the proprietor of a place of public refreshment, specifically a restaurant, of obligation to receive in his place any person whose reception would be offensive to the majority of the persons having occasion to use the restaurant and would injure the business. The statute is construed by the Supreme Court of Delaware to authorize exclusion of appellant because he is a Negro without any evidence of his offensiveness to other customers or of injury to business. Appellant challenges the statute as thus construed and applied to exclude him from a restaurant operated in a state-owned public garage and the court below sustains the statute in the face of appellant's challenge. This Court has jurisdiction because the appeal draws in question the validity of the statute, the decision below being in favor of validity.

Inasmuch as the application of the statute to authorize appellant's exclusion because of race from the restaurant in the government-owned facility derives solely from the construction and enforcement given the statute by the state court below, such discriminatory construction and enforcement is state judicial action repugnant to the equal protection clause of the Fourteenth Amendment.

The court below indulged in erroneous assumptions of facts outside the record before it and from these assumptions drew the legal conclusion that there was an absence of state action in the leasing of a restaurant in a state-owned public facility. The court below also improperly

assessed the relationship between the state-agency lessor and its lessee and the responsibilities flowing from this relationship. These errors by the court below have invalidly deprived appellant of the equal protection of the laws.

ARGUMENT

I

This Court has jurisdiction of the appeal.

This case involves the question of the validity, under the Fourteenth Amendment, of a Delaware statute; Title 24, Delaware Code §1501, which, as construed and applied by the Supreme Court of Delaware to the facts of this case, authorizes the operator of a restaurant located in a public structure, conceived as a public facility by the Delaware General Assembly and constructed and maintained by a public agency of that state as a public facility, to deny service to appellant solely because he is a Negro. It is now established beyond meaningful dispute that a statute which requires or permits racial distinctions patently violates the Fourteenth Amendment. *Brown* v. *Board of Education of Topeka*, 347 U. S. 483, *Gayle* v. *Browder*, 352 U. S. 903.

That the constitutional validity of this statute was drawn in question in this case and that the statute was sustained by the court below is inescapable in the aggregate context of the case: a suit to enjoin refusal of service to appellant because of his race; the admission of such refusal in the pleadings (R. 28-29); appellees' motions for summary judgment, pleading the statute as giving the right to refuse service to appellant (R. 9-11); the total absence in the record of facts to evidence the existence of requisites of the statute, viz., offensiveness of appellant to other customers and injury to business; appellees' briefs in support of their

motions urging judicial notice of the "notorious and self-evident fact" that appellant's being a Negro dispensed with proof of the statutory grounds for refusal of service (See fn. 2, *supra*); appellees' further contention, definitively arguing that "a Delaware innkeeper may refuse service to Negroes by reason of the provisions of" this statute (See fn. 1, *supra*); appellant's attack under the Fourteenth Amendment on the validity of the statute, given the construction and application appellees advanced; the ruling of the court below that on the basis of the statute, restaurant service to appellant could be refused.

As initiated, appellant's action was not framed in terms of a challenge to the statute, for the statute does not specifically or by implication authorize racial discrimination. Moreover, in the 83 years of its existence prior to the filing of appellant's action, there are no reported cases dealing with the statute and no discoverable record of its application. When, however, it was advanced to justify the racial discrimination of which appellant complained, his attack on its constitutional validity was clear and in a mode appropriate in the context of the case. That challenge, or attack, is the basis of this Court's jurisdiction under 28 U. S. C. §1257(2).

In the face of that challenge the court below has sustained the statute. Its ruling should not be suffered to escape review merely because it does not contain language explicitly declaring the statute impervious to constitutional attack. The reference in the opinion below to erosion of "our local law" by Federal decisions and the holding that the statute "does not compel the operator of a restaurant to give service," under the facts presented in this case, amply demonstrate the decision of the court below to uphold the statute against the attack made upon it. The issue therefore is an appropriate one for consideration under

28 U. S. C. 1257(2), because the court below has construed the state statute to authorize discrimination against appellant on the ground of his race and has upheld the statute against his constitutional attack.

In the event that this Court should determine that an appeal will not lie under 28 U. S. C. 1257(2), it is respectfully submitted that the case should be treated as an appropriate one for certiorari. *Pennsylvania* v. *Board of Directors of City Trusts*, 353 U. S. 230 (1957).

II

The judicial construction below of the statute as sanctioning racial discrimination is state action repugnant to the Fourteenth Amendment.

The statute invoked by appellees to exclude appellant, as enacted by the Delaware General Assembly, contains no racial test or standard, as clearly it could not. *Strauder* v. *West Virginia*, 100 U. S. 303 (1880).

It may be that the statute is so vague, indefinite and uncertain in its terms that it cannot be given intelligible meaning and therefore would be inoperative. See Crawford, *The Construction of Statutes*, §198. No guidance is given by the statute as to when or how the offensiveness of a prospective patron "to the major part of his [the restaurateur's] customers" is to be ascertained. It is not indicated whether the ascertainment is to be made by a poll of, in the language of the statute, "all who have occasion for entertainment or refreshment," irrespective of whether that occasion was simultaneous with the appearance of the suspectedly offensive character or prior thereto or at some indefinite future time when the suspect is not presenting himself for service.

However, assuming that the statute as enacted is valid, appellees have not shown that they have exercised the tests it does contain.[3] With these tests unavailed of and no showing whatever made with respect to appellant's effect on the customers in the restaurant at the time of his appearance, the court below, presumably acceding to the Authority's entreaty that it take judicial notice that members of the class of persons to which appellant belongs, i.e., Negroes, are offensive, determined that the statute authorized his exclusion.

It has been held constitutionally impermissible for a court, an agency of state government, to enforce wholly private agreements plainly discriminatory on their face against Negroes, or more accurately and inclusively, all non-Caucasians, with respect to their right to acquire and occupy real property. "[J]udicial action . . . bears the clear and unmistakable imprimatur of the State," this Court said; and when by such action the state undertakes to enforce private racially discriminatory pacts preventing acquisition of real estate, Fourteenth Amendment equal protection is transgressed. *Shelley* v. *Kraemer*, 334 U. S. 1 (1948). It would seem certainly not less transgressive of that constitutional guaranty when the court below construes and enforces a statute, which on its face has no racially discriminatory provisions, to deprive appellant, because he is a Negro, of the use of real property owned and maintained by a state governmental agency.

Even if one agrees with the court below that the statute is merely a restatement of the common law (R. 54), and

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[3] In its brief in the court below, the Authority sought to excuse its failure to employ the tests thus: They "would involve the appearance of an arbitrary number of witnesses to be compelled to state their personal predilections upon a delicate and incitatory question."

we are not prepared so to agree, this Court has condemned state judicial enforcement of common law policy which nullifies constitutional freedoms. *American Federation of Labor* v. *Swing*, 312 U. S. 321 (1941), *Bridges* v. *California*, 314 U. S. 252 (1941).

III

The court below improperly absolves an agency of state government from responsibility for denial of equal protection of the laws to appellant.

That a state, in operating its facilities on a racially segregated basis, violates the constitutional guaranty of equal protection of the laws is now definitely established. *Brown* v. *Board of Education of Topeka, supra.* The court below early in its written opinion refers to this decision but in a curiously oblique understatement of the principle of the *Brown* case presignifies the departure it is to make from it. Says the opinion:

> "[T]he states and their instrumentalities have been required to act *within the scope of state action* in a racially non-segregated manner" (R. 44). (Italics supplied.)

The opinion then proceeds ultimately to the conclusion that the Authority, a state agency, in its leasing of space for a restaurant in what the trial court called a "vital public facility," is not involved in state action and that its lessee acts in a "purely private capacity" and the constitutional inhibition against racial discrimination does not apply. In arriving at this conclusion, the court below not only relies on factual information outside the record but departs from practically undeviating authority on the subject of state-owned leased real estate.

a. The court below reasons from assumptions of fact not in the record but imported from an earlier case to which this appellant was not a party.

From *Wilmington Parking Authority* v. *Ranken*, *supra*, p. 4, brought by the Authority against a taxpayer, not this appellant, to test the constitutionality of the Parking Authority Act, the court below imported facts upon which it relied for support of its determination that state action was absent in the instant case. Because the parking structure had not actually been erected, many of the cost figures used in that case were only the estimates projected by the Authority's consultants. Id. 105 A.2d at 618. On the basis of that case the court below concluded that the only "public money" used in the construction of the parking structure was "$934,000 'advanced' by the City of Wilmington and used in the purchase of a portion of the land required" (R. 50). This sum the court stated was only "approximately 15% of the total cost"; and it held that a "slight contribution is insufficient" to denote state action (R. 53).

The figure used by the court below conflicts with undisputed acknowledgment by the chairman of appellee Authority, in the record before the court below, that:

> "Subsequently the City of Wilmington gave the Authority $1,822,827.69, which sum the Authority applied to the redemption of the Revenue Bonds delivered to Diamond Ice & Coal Co. and to the repayment of the Equitable Security Trust Company loan" (R. 12).

Appellant's petition for reargument undertook to point out that the error resulting from this venturing beyond the record caused the court below to minimize what it considered the percentage of "public money" in the project. As indicated above, the petition was denied without opinion.

Whether the figure be $934,000 or $1,822,000 or, as seems more probable from the record, at least the aggregate of these sums (R. 12), what the court below regarded as the "public money," is substantial.

Moreover, it is difficult to understand that any of the funds shown by the affidavit of the Authority's chairman as coming to it (R. 12), whether cash donated by the City of Wilmington, proceeds from the sale of the Authority's revenue bonds, parking revenues or leasehold rental income, once in the treasury of this public governmental agency, are other than public funds. If public property, it cannot be used to maintain racial discrimination. *Cooper* v. *Aaron*, 358 U. S. 1 (1958). If funds constituting a trust created by an individual out of his own private fortune, in the custody of public trustees whose official position makes them agents of the state, cannot be administered in a racially discriminatory manner, *Pennsylvania* v. *Board of Directors of City Trusts*, *supra*, p. 11, then, a fortiori, the funds controlled by the Authority, however derived, cannot be used by it to work discrimination against appellant because he is a Negro.

b. The court below departs from practically unanimous authority as to the responsibility to preserve equal protection in the leasing of places of public accommodation in government-owned realty.

That a public lessor and its lessee of government-owned realty are so related as to be mutually involved in state action is the clear rationale and result of the decided cases.[4]

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[4] *Muir* v. *Louisville Park Theatrical Ass'n*, 347 U. S. 971, vacating and remanding 202 F.2d 275 (6th Cir. 1953) (leased open air theatre); *Tate* v. *Department of Conservation*, 133 F. Supp. 53 (E. D. Va. 1955), aff'd 231 F.2d 615 (4th Cir. 1956), cert. den. 352 U. S. 838 (leased beach); *City of Greensboro* v. *Simkins*, 246 F.2d 425 (4th Cir. 1957), affirming 149 F. Supp. 562 (M. D. N. C. 1957) (leased golf course); *Jones* v. *Marva Theatres Inc.*, 180

Although the court below seeks to distinguish some of these cases, they present situations closely corresponding to the instant case. In *Nash* v. *Air Terminal Services, Inc.*, 85 F. Supp. 545 (E. D. Va., 1949), a corporate restaurant concessionaire in an airport in Virginia owned by the national government, when sued for damages for refusing to serve a Negro, defended on the ground that under Virginia law, it was entitled to refuse service to the plaintiff. This contention was rejected. The court identified the private concessionaire with the "public government" owning the property on which the concession was operated, declared that the concessionaire was conducting the facility "in the place and stead of the Federal Government" and was "too close, in origin and purpose, to the functions of the public government" to be free of the inhibitions placed on government. Close identity between the governmental lessor and the private lessee exists also in the instant case and is, in fact, so close that the government facility can function only by virtue of its lessees. The power to lease portions of the first floor of the structure in the instant case is permitted to the Authority by the Parking Authority Act only if the Authority determines such leasing desirable to assist in defraying the expenses of the Authority, and here it was so determined (R. 12). The leasing was necessary to make economically feasible the operation of the parking facility as a self-sustaining governmental unit. This is admitted by the answers of both appellees (R. 5, 7). Private ownership itself has been held a mere technicality and constitutional liberties are protected on privately-owned property, if that property is operated as a municipality, i.e., a governmental entity. See *Marsh* v. *Alabama*, 326 U. S. 501 (1946).

F. Supp. 49 (D. C. Md. 1969) (leased motion picture theatre); *Coke* v. *City of Atlanta*, —— F. Supp. —— (N. D. Ga., Jan. 6, 1960) (leased restaurant); *Kern* v. *City Commissioners*, 151 Kans. 565, 100 P.2d 709 (1940) (leased swimming pool).

The decision of the court below on the question of "state action" is in conflict with the opinion in *Derrington* v. *Plummer*, 240 F. 2d 922 (5th Cir. 1956). There a cafeteria in a county courthouse was held constitutionally prohibited from discriminating on the basis of race. The court held the building had been erected "with public funds for the use of the citizens generally" and that "diversion of the property to purely private use" could not be countenanced. In effect, the court coalesces the lessee with the county. Discrimination by the latter would violate the Fourteenth Amendment and the court held the "same result inevitably follows when the service is rendered through the instrumentality of a lessee." Id. at p. 925.

The court below absolved appellee Eagle from the responsibility not to discriminate on the theory that the public government did not control the restaurant. While 22 Delaware Code Ch. 5 authorizes leasing of space in a portion of the Authority's building, the General Assembly conceived that such leasing was to enable the Authority to serve a public purpose, not to divest itself of control. Indeed the court below, in the *Ranken* case, *supra*, sustained the leasing of a portion of the building only as incidental to the public uses. Its holding in the instant case that the lessee acts in a purely private capacity is certainly not consistent with a leasing incidental to public uses. Having total control, that is ownership of the fee, the Authority should have found a lessee who would have agreed to operate the restaurant consistently with the constitutional duty which the Vice Chancellor, in conformity with all of the cases, recognized was imposed on the Authority itself "not to deny to Delawareans the equal protection of the laws" (R. 39). Previous attempts by state governments at divesting themselves of the power to insist on nondiscrimination have been exposed and state responsibility enforced. See *Rice* v. *Elmore*, 165 F. 2d 387 (4th Cir. 1947), cert. denied 333 U. S. 875 (discrimination in

South Carolina primary unconstitutional although state had repealed statutory references to primary); *Terry* v. *Adams*, 345 U. S. 461; *Smith* v. *Allwright*, 321 U. S. 649. See also *Culver* v. *City of Warren*, 84 Ohio App. 373, 83 N. E. 2d 82 and *Lawrence* v. *Hancock*, 77 F. Supp. 1004, which pointedly hold that a governmental agency may not in leasing a public facility relieve itself of the obligation to cause the public property to be operated without racial discrimination.

CONCLUSION

The court below has made the observation that appellant was not "discriminated against by the Authority in the operation of the public parking portion of the facility." In a single building, erected and maintained with public funds by an agency of state government to serve a public purpose, this appellant in one portion of the building serving the public can be a Delawarean whose rights are undifferentiated from other citizens and in another portion of the building, also ostensibly serving the public, is a demi-citizen without rights. This confusing irony now derives palpably from the error of the court below in construing a statute as permitting discrimination against appellant because he is a Negro and in failing to enforce the responsibility of the Authority to accord equal protection of the laws to all persons.

The judgment below should be reversed.

Respectfully submitted,

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APPENDIX

Title 22 Delaware Code, Chapter 5, Sections 501-515:

§501. Findings and declaration of policy

It is determined and declared as a matter of legislative finding that—

(1) Residential decentralization in incorporated cities has been accompanied by an ever increasing trend in the number of persons entering the business sections by private automobile as compared with other modes of transportation;

(2) The free circulation of traffic of all kinds through the streets of cities is necessary to the health, safety, and general welfare of the public whether residing in the city or traveling to, through, or from the city, in the course of lawful pursuits;

(3) The greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of cities;

(4) The parking of motor vehicles on the streets has contributed to this congestion to such an extent as to interfere seriously with the primary use of such streets for the movement of traffic;

(5) Such parking prevents the free circulation of traffic in, through, and from the city, impedes rapid and effective fighting of fires and the disposition of police forces in the district and endangers the health, safety, and welfare of the general public;

(6) Such parking threatens irreparable loss in valuations of property in the city which can no longer be readily reached by vehicular traffic;

(7) This parking crisis, which threatens the welfare of the community, can be reduced by providing sufficient off-street parking facilities properly located in the several residential, commercial, and industrial areas of the city;

(8) The establishment of a parking authority will promote the public safety, convenience, and welfare;

(9) It is intended that the parking authority cooperate with all existing parking facilities so that private enterprise and government may mutually provide adequate parking services for the convenience of the public;

therefore it is declared to be the policy of this State to promote the safety and welfare of the inhabitants thereof by the creation in incorporated cities of bodies corporate and politic to be known as "Parking Authorities" which shall exist and operate for the purposes contained in this chapter. Such purposes are declared to be public uses for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.

§502. Definitions

As used in this chapter, unless the context requires a different meaning—

"Authority" means a body politic and corporate created pursuant to this chapter;

"Board" means the governing body of the Authority;

"Bonds" means and includes the notes, bonds and other evidence of indebtedness, or obligations, which the Authority is authorized to issue pursuant to section 504 of this title;

"City" means incorporated city or town;

"Construction" means and includes acquisition and construction, and "to construct" means and includes to acquire and to construct, all in such manner as may be deemed desirable;

"Facility" or "facilities" means lot or lots, buildings and structures, above, at, or below the surface of the earth, including equipment, entrances, exits, fencing, and all other accessories necessary or desirable for the safety and convenience of the parking of vehicles;

"Federal agency" means and includes the United States of America, the President of the United States of America, and any department or corporation agency or instrumentality heretofore, or hereafter created, designated, or established by the United States of America;

"Improvement" means and includes extension, enlargement, and improvement, and "to improve" means and includes to extend, to enlarge, and to improve, all in such manner as may be deemed desirable.

"Municipality" means any county, incorporated city or incorporated town of this State;

"Persons" means and includes natural persons;

"Project" means any structure, facility, or undertaking which the Authority is authorized to acquire, construct, improve, maintain, or operate under the provisions of this chapter.

§503. Method of incorporation

(a) Whenever the city council or other governing body of a city desires to organize an Authority, under the provisions of this chapter, it shall adopt an ordinance signifying its intention to do so.

In the event that such ordinance sets forth the proposed articles of incorporation in full it shall not be required, any law to the contrary notwithstanding, in publishing such ordinance, under the provisions of existing law, to publish such proposed articles of incorporation in full, but it shall be sufficient compliance with such law in such publication to set forth briefly the substances of such proposed articles of incorporation and to refer to the provisions of this chapter. Thereafter the city council shall cause a notice of such ordinance to be published at least one time in a newspaper published and of general circulation in the county in which the Authority is to be organized. The notice shall contain a brief statement of the substance of the ordinance, including the substance of such articles, making reference to this chapter, and shall state that on a day certain, not less than three days after publication of the notice, articles of incorporation of the proposed Authority will be filed with the Secretary of State of this State.

(b) On or before the day specified in the notice the city council shall file with the Secretary of State articles of incorporation together with proof of publication of the notice referred to in subsection (a) of this section. The articles of incorporation shall set forth—

(1) The name of the Authority;

(2) A statement that such Authority is formed under the provisions of this chapter;

(3) The name of the city, together with the names and addresses of its council members;

(4) The names, addresses and term of office of the first members of the board of the Authority.

All of which matter shall be determined in accordance with the provisions of this chapter. The articles of incor-

poration shall be executed by the incorporating city by its proper officer and under its municipal seal.

(c) If the Secretary of State finds that the articles of incorporation conform to law he shall forthwith, but not prior to the day specified in the notice, endorse his approval thereon, and when all proper fees and charges have been paid shall file the articles and issue a certificate of incorporation to which shall be attached a copy of the approved articles. Upon the issuance of such certificate of incorporation by the Secretary of State, the corporate existence of the Authority shall begin when such certificate has been recorded in the office for the recording of deeds in the county where the principal office of the Authority is to be located. The certificate of incorporation shall be conclusive evidence of the fact that such Authority has been incorporated, but proceedings may be instituted by the State to dissolve any Authority which shall have been formed without substantial compliance with the provisions of this section.

(d) When the Authority has been organized and its officers elected, the secretary shall certify to the Secretary of State the names and addresses of its officers, as well as the principal office of the Authority. Any change in the location of the principal office shall likewise be certified to the Secretary of State within 10 days after such change.

§504. Purpose and powers

(a) The Authority, incorporated under this chapter, shall constitute a public body corporate and politic, exercising public powers of the State as an agency thereof, and shall be known as the Parking Authority of the city, but shall in no way be deemed to be an instrumentality of the city or engaged in the performance of a municipal function. The Authority shall be for the purpose of conducting the

necessary research activity, to maintain current data leading to efficient operation of off-street parking facilities, for the fulfillment of public needs in relation to parking, establishing a permanent coordinated system of parking facilities, planning, designing, locating, acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, land and facilities to be devoted to the parking of vehicles of any kind.

The Authority shall not have the power to directly engage in the sale of gasoline, the sale of automobile accessories, automobile repair and service or any other garage service, other than the parking of vehicles, and the Authority shall not directly engage in the sale of any commodity of trade or commerce; provided, however, that the Authority shall have the power to lease space in any of its facilities for use by the lessee for the sale of gasoline, the sale of automobile accessories, automobile repair and service or any other garage service and to lease portions of any of its garage buildings or structures for commercial use by the lessee, where, in the opinion of the Authority, such leasing is necessary and feasible for the financing and operation of such facilities. Any such lease shall be granted by the Authority to the highest and best bidder, upon terms specified by the Authority, after due public notice has been given, asking for competitive bids; provided, however, that if after such public notice no bid is received and/or the Authority rejects any bid or bids received, thereafter the Authority may negotiate any such lease or leases without further public notice but on a basis more favorable than that contained in any bid or bids rejected, if any. The phrase "due public notice," as used in this section, shall mean a notice published at least 10 days before the award of any such lease in a newspaper of general circulation

published in a municipality where the Authority has its principal office, and if no newspaper is published therein, then by publication in a newspaper of general circulation in the County where the Authority has its principal office. The Authority may reject any or all bids if, in the opinion of the Authority, any such lease granted as a result of any such bid or bids would not be adequate or feasible for the financing and operation of such facilities.

(b) Every Authority may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes including, but without limiting the generality of the foregoing, the rights and powers described below.

(1) To have existence for a term of 50 years as a corporation and thereafter until the principal and interest upon all of its bonds shall have been paid or provisions made for such payment, and until all of its other obligations shall have been discharged.

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts.

(3) To adopt, use and alter at will a corporate seal.

(4) To acquire, purchase, hold, lease as lessee, and use any franchise, property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purpose of the Authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time required by it.

(5) To acquire by purchase, lease or otherwise, and to construct, improve, maintain, repair, and operate projects.

(6) To make by-laws for the management and regulation of its affairs.

(7) To appoint officers, agents, employees, and servants, to prescribe their duties, and to fix their compensation.

(8) To fix, alter, charge, and collect rates and other charges for its facilities at reasonable rates to be determined exclusively by it, subject to appeal as provided in this paragraph, for the purposes of providing for the payment of the expenses of the Authority, the construction, improvement, repair, maintenance, and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations or with the city. Any person questioning the reasonableness of any rate fixed by the Authority may bring suit against the Authority in the Superior Court of the county wherein the project is located. The Superior Court shall have exclusive jurisdiction to determine the reasonableness of rates and other charges fixed, altered, charged, or collected by the Authority. Appeals may be taken to the Supreme Court within 30 days after the Superior Court has rendered a final decision.

(9) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations of the Authority; the bonds to have a maturity date not longer than forty years from the date of issue, except that no refunding bonds shall have a maturity date longer than the life of the Authority; and to secure the payment of such bonds or any part thereof by pledge, or deed of trust of all, or any of its revenues and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the Authority

deems advisable, and in general to provide for the security for the bonds and the rights of the holders thereof.

(10) To make contracts of every name and nature, and to execute all instruments necessary or convenient for the carrying on of its business.

(11) Without limitation of the foregoing to borrow money and accept grants from, and to enter into contracts, leases, or other transactions with, any Federal agency, State of Delaware, municipality, corporation or authority.

(12) To have the power of eminent domain.

(13) To pledge, hypothecate, or otherwise encumber all or any of the revenues or receipts of the Authority, as security for all or any of the obligations of the Authority.

(14) To do all acts and things necessary for the promotion of its business and the general welfare of the Authority to carry out the powers granted to it by this chapter or any other law.

(15) To enter into contracts with the State of Delaware, municipalities, corporations or authorities for the use of any project of the Authority and fixing the amount to be paid therefor.

(16) To enter into contracts of group insurance for the benefit of its employees, and to set up a retirement or pension fund for such employees, similar to that existing in the municipality where the principal office of the project is located.

(c) The Authority shall not at any time, or in any manner, pledge the credit or taxing power of the State of

Delaware or any political subdivision, nor shall any of its obligations be deemed to be obligations of the State of Delaware, or of any of its political subdivisions, nor shall the State of Delaware or any political subdivision thereof be liable for the payment of principal or of interest on such obligations.

(d) In addition to the provisions in this chapter provided for the financing of the costs of acquiring lands and premises and for the construction and improvement of parking projects, the Authority may by resolution, as provided in this subsection, establish a benefit district.

(1) One benefit district may be designated for the condemnation of lands for one or several parking stations. The Authority shall determine the percentage of the costs of condemnation which shall be assessable to such benefit district. Not more than 80 per cent of such costs shall be assessable to such benefit district or benefit districts.

(2) After a benefit district has been established, no further proceedings shall be taken unless there is filed with the secretary of the Authority, within sixty days of the passage of the resolution creating the benefit district, a petition requesting the establishment of such public parking station or stations. Such petition shall be signed by the resident owners of real estate owning not less than 51 per cent of the front feet of the real estate fronting or abutting upon any street included within the limits of the benefit district. In determining the sufficiency of the petition, lands owned by the city, county, State or United States or by nonresident owners of real estate within the benefit district shall not be counted in the aggregate of lands within such benefit district. After any petition has been signed by an owner of land in the benefit district, the change of ownership of the land shall not affect the petition. In any case where the owners of lands within the benefit district are tenants in

common, each co-tenant shall be considered a landowner to the extent of his undivided interest in the land. The owner of a life estate shall also be deemed a landowner for the purpose of this chapter. Guardians of minors or insane persons may petition for their wards when authorized by the proper court so to do. Resident owner of land, as defined in this paragraph, shall be any landowner residing in the city and owning land in the benefit district. No suit shall be maintained in any court to enjoin or in any way contest the establishment of such parking stations or the establishment of a benefit district unless the suit be instituted and summons served within 30 days from and after the date of the filing of such petition with the secretary of the Authority.

(3) Whenever the Authority shall have acquired lands for public parking stations and shall have declared and ordered that not more than 80 per cent of the cost of establishing or improving public parking stations, as provided in this subsection, will be paid by the levy of special assessments upon real estate situate in any one or more benefit districts, it shall cause to be made by some competent person an estimate, under oath, of the cost thereof, which estimate shall be filed with the secretary of the Authority. The assessment against the benefit district shall be apportioned among the various lots, tracts, pieces, and parcels of land within the benefit district in accordance with the special benefits accruing thereto, this apportionment of benefit assessments to be made by three disinterested property owners appointed by the mayor of the city or if such city has no mayor, by its chief executive officer within 30 days after the filing of the estimate of the cost of the improvement with the secretary of the Authority. As soon as the amount chargeable against each piece of property is ascertained, the Authority of such city shall by resolution levy such amount against this real estate in the benefit district,

which resolution shall be published once in a newspaper of general circulation in such city. No suit to question the validity of the proceedings of the Authority shall be commenced after 30 days from the awarding of a contract for such improvements and until the expiration of the 30 days the contractor shall not be required to commence work under his contract. If no suit shall be filed within such 30 days then all proceedings theretofore had shall be held to be regular, sufficient, and valid.

(4) The cost of condemnation and improvement of such public parking stations may be levied and assessed in not to exceed 10 installments, with interest on the whole amount remaining due and unpaid each year at a rate of interest not exceeding 5 per cent per annum. Any owner of land within the benefit district may, within 30 days after the assessment resolution is passed, pay the entire amount assessed against the land. The Authority of such city may assess, levy, and collect the cost of condemnation and improvement of such public parking stations as is assessed against the privately owned property in the benefit district. The assessment shall constitute a lien from the date the same is assessed by resolution, as provided in this paragraph, against the respective premises against which the same is levied, in the same manner as city taxes on real estate are constituted a lien, and shall be collectible in the manner provided for the collection of taxes assessed against the real estate of the City of Wilmington by monition process, as provided in Chapter 143, Vol. 36, Laws of Delaware.

(e) When any real property or any interest therein heretofore or hereafter acquired by the Authority is no longer needed for the purposes defined in this chapter, or when, in the opinion of the Authority it is not desirable or feasible to hold and use such property for said purposes, the Authority may sell the same at private or public sale as the

Authority shall determine, granting and conveying to the purchaser thereof a fee simple marketable title thereto. The Authority may make such sale for such price and upon such terms and conditions as the Authority deems advisable and for the best interests of the Authority and may accept in payment, wholly or partly, cash, bonds, mortgages, debentures, notes, warrants, or other evidences of indebtedness as the Authority may approve. The consideration received from any such sale may be applied by the Authority, in its discretion, to the repayment, in whole or in part, of any funds contributed to the Authority by a municipality under the provisions of section 508 of this title or retained by the Authority for the purposes of this chapter. Without limitation of the foregoing, the Authority may accept as consideration in whole or in part for the sale of any such real property, a covenant, agreement or undertaking on the part of any purchaser to provide and maintain off-street parking facilities on such property or a portion thereof for the fulfillment of public parking needs for such period and under such terms and conditions as the Authority shall determine. Any such covenant, agreement or undertaking on the part of the purchaser as aforesaid and the right of the Authority to fix and alter rates to be charged for any such parking facilities as well as the right of appeal as in this section provided, shall be set forth and reserved in the deed or deeds of conveyance. Any such covenant, agreement or undertaking may be enforced by the Authority in an action for specific performance brought in the Court of Chancery of this State. As amended 49 Del. Laws, Ch. 72, eff. May 14, 1953; 50 Del. Laws, Ch. 222, §1, eff. June 8, 1955; 50 Del. Laws, Ch. 279, §§1, 2, eff. June 13, 1955.

§505. Bonds

(a) The bonds of any Authority referred to and authorized to be issued by this chapter shall be authorized

by resolution of the board thereof, and shall be of such series; bear such date or dates; mature at such time or times not exceeding 40 years from their respective dates; bear interest at such rate or rates, not exceeding 6 per cent per annum payable semi-annually; be in such denominations; be in such form, either coupon or fully registered, without coupons; carry such registration, exchangeability, and interchangeability privileges; be payable in such medium or payment and at such place or places; be subject to such terms of redemption, not exceeding 105 per cent of the principal amount thereof; and be entitled to such priorities in the revenues or receipts of such Authority, as such resolution or resolutions may provide. The bonds shall be signed by such officers as the Authority shall determine, and coupon bonds shall have attached thereto interest coupons bearings the facsimile signature of the treasurer of the Authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that one or more of the officers signing such bonds, or the treasurer whose facsimile signature shall be upon the coupon, or any officer thereof, shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered.

The bonds may be sold at public or private sale for such price or prices as the Authority shall determine. The interest cost to maturity of the money received for any issue of the bonds shall not exceed 6 per centum per annum. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the Authority may determine.

(b) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to (1) pledging the full faith

and credit of the Authority for such obligations or restricting the same to all or any of the revenues of the Authority from all or any projects or properties; (2) the construction, improvement, operation, extension, enlargement, maintenance, and repair of the project, and the duties of the Authority with reference thereto; (3) the terms and provisions of the bonds; (4) limitations on the purposes to which the proceeds of the bonds then, or thereafter to be issued, or of any loan or grant by the United States, may be applied; (5) the rate of tolls and other charges for use of the facilities of, or for the services rendered by the Authority; (6) the setting aside of reserves or sinking funds and the regulation and disposition thereof; (7) limitations on the issuance of additional bonds; (8) the terms and provisions of any deed of trust or indenture securing the bonds, or under which the same may be issued, and (9) any other additional agreements with the holders of the bonds.

(c) Any Authority may enter into any deeds of trust indentures, or other agreements, with any bank or trust company or other person or persons in the United States having power to enter into the same, including any Federal agency, as security for such bonds, and may assign and pledge all or any of the revenues or receipts of the Authority thereunder. Such deed of trust, indenture, or other agreement, may contain such provisions as may be customary in such instruments, or as the Authority may authorize, including provisions as to: (1) the construction, improvement, operation, maintenance, and repair of any project and the duties of the Authority with reference thereto; (2) the application of funds and the safeguarding of funds on hand or on deposit; (3) the rights and remedies of the trustee and holders of the bonds which may include restrictions upon the individual right of action of such bondholder, and (4) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(d) The bonds shall have all the qualities of negotiable instruments under the law merchant and the negotiable instruments law of the State of Delaware.

§506. Remedies of bondholders

(a) The rights and the remedies conferred upon or granted to the bondholders in this section shall be in addition to, and not in limitation of, any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds, or by any deed of trust, indenture, or other agreement under which the same may be issued. In the event that the Authority shall default in the payment of principal of, or interest on any of the bonds, after the principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the Authority shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of the bonds, the holders of 25 per cent in aggregate principal amount of the bonds then outstanding by instrument or instruments filed in the office of the recorder of deeds of the county, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the bondholders for the purpose provided in this section.

(b) Such trustee, and any trustee under any deed of trust, indenture or other agreement, may, and upon written request of the holders of 25 per cent or such other percentages as may be specified in any deed of trust, indenture, or other agreement, in principal amount of the bonds then outstanding, shall, in his or its own name—

(1) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the Authority to

collect rates, rentals or other charges adequate to carry out any agreement as to or pledge of the revenues or receipts of the Authority, and to require the Authority to carry out any other agreements with, or for the benefit of the bondholders, and to perform its and their duties under this chapter;

(2) Bring suit upon the bonds;

(3) By action or suit in equity require the Authority to account as if it were the trustee of an express trust for the bondholders;

(4) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(5) By notice in writing to the Authority declare all bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of 25 per cent or such other percentages as may be specified in any deed of trust, indenture, or other agreement, of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

(c) The Court of Chancery in and for the county wherein the Authority is located shall have jurisdiction of any suit, action or proceedings by the trustee on behalf of the bondholders. Any trustee when appointed or acting under a deed of trust, indenture, or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter and take possession of the facilities of the Authority or any part or parts thereof, the revenues or receipts from which are, or may be, applicable to the payment of the bonds in default, and operate and maintain the same, and collect and receive all rentals and other

revenues thereafter arising therefrom, in the same manner as the Authority or the board might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee, and of the receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues and receipts derived from the facilities of the Authority, the revenues or receipts from which are or may be applicable to the payment of the bonds in default. The trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section, or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(d) Nothing in this section, or any other section of this chapter, shall authorize any receiver appointed pursuant to this chapter for the purpose of operating and maintaining any facilities of the Authority to sell, assign, mortgage, or otherwise dispose of, any of the assets of whatever kind and character belonging to the Authority. It is the intention of this chapter to limit the powers of such receiver to the operation and maintenance of the facilities of the Authority as the court shall direct; and no holder of bonds of the Authority, nor any trustee shall ever have the right in any suit, action or proceedings at law or in equity to compel a receiver, nor shall any receiver ever be authorized, or any court be empowered to direct the receiver to sell, assign, mortgage, or otherwise dispose of, any assets of whatever kind or character belonging to the Authority.

§507. Governing body

(a) The powers of each Authority shall be exercised by a board composed of five members, all of whom shall be resi-

dents of the city creating the Authority. The mayor of the city, or if such city or town has no mayor, its chief executive officer, shall appoint the members of the board, one of whom shall serve for one year, one for two years, one for three years, one for four years, and one for five years from the first day of July in the year in which such Authority is created as provided in this chapter. Thereafter the mayor shall not sooner than 60 days, nor later than 30 days prior to July first in each year in which a vacancy occurs, appoint a member of the board for a term of five years to succeed the member whose term expires on the first day of July next succeeding. Vacancies for unexpired terms that occur more than 60 days before the end of a term shall be promptly filled by appointment by the mayor. All such appointments shall be subject to the confirmation of the city council or other governing body of the city. Any member of the board may be removed for cause by the mayor, or if such city or town has no mayor, by its chief executive officer, with the concurrence of two-thirds of all the members of the council, or other governing body of the city or town, and the person against whom such charges are made shall be given a reasonable opportunity to make his defense.

(b) Members shall hold office until their successors have been appointed and may succeed themselves. A member shall receive no compensation for his services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(c) The members of the board shall select from among themselves a chairman, a vice-chairman, and such other officers as the board may determine. The board may employ a secretary, an executive director, its own counsel and legal staff, and such technical experts and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation

of such persons. Three members of the board shall constitute a quorum for its meetings. Members of the board shall not be liable personally on the bonds or other obligations of the Authority, and the rights of creditors shall be solely against such Authority. The board may delegate to one or more of its agents or employees such of its powers as it deems necessary to carry out the purposes of this chapter, subject always to the supervision and control of the board. The board shall have full authority to manage the properties and business of the Authority and to prescribe, amend, and repeal by-laws, rules and regulations governing the manner in which the business of the Authority may be conducted, and the powers granted to it may be exercised and embodied.

§508. Acquisition of lands; cost financing by municipality

* * * * *

The Authority may acquire by purchase or eminent domain proceedings either the fee or such rights, title, interest, or easement in such lands, as the Authority deems necessary for any of the purposes mentioned in this chapter. No property devoted to a public use, nor any property of a public service company, property used for burial purposes, places of public worship, nor property which on June 21, 1951 was used as a facility or facilities for the parking of motor vehicles, so long as the property is continuously so used, and so long as the operation of the facility complies with parking and traffic ordinances of the city shall be taken under the right of eminent domain. The right of eminent domain shall be exercised by the Authority in the manner provided by chapter 61 of Title 10.

The right of eminent domain conferred by this section may be exercised only within the city.

Court proceedings necessary to acquire property or property rights, for purposes of this chapter, shall take prece-

dence over all causes not involving the public interest in all courts to the end that the provision of parking facilities be expedited.

Any municipality establishing an Authority under this chapter may, under such terms and conditions as it may deem appropriate, provide for and pay to such Authority such sum or sums of money necessary to acquire in whole or in part the lands upon which such Authority may undertake to erect a parking facility as herein provided and/or such sum or sums of money necessary to construct in whole or in part a parking facility or facilities as herein provided; the municipality for the purpose of providing said money may issue its general obligation bonds secured by the faith and credit of the municipality. The aggregate amount of general obligation bonds issued by a municipality under this provision shall be in addition to and not within the limitations of any existing statutory debt limitation of the municipality. As amended 49 Del. Laws, Ch. 2, eff. June 4, 1953; 50 Del. Laws, Ch. 221, §1, eff. June 8, 1955.

§509. Moneys; examination of accounts

All moneys of any Authority, from whatever source derived, shall be paid to the treasurer of the Authority. The moneys shall be deposited, in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. The moneys in the accounts shall be paid out on the warrant or other order of the chairman of the Authority, or of such other person or persons as the Authority may authorize to execute such warrants or orders. Every Authority shall have at least an annual examination of its books, accounts and records by a certified public accountant. A copy of such audit shall be delivered to the city creating the Authority. A concise financial statement shall be published annually at least once in a newspaper of general circulation in the city where the prin-

cipal office of the Authority is located. If such publication is not made by the Authority the city shall publish such statement at the expense of the Authority. If the Authority fails to make such an audit then the auditor or accountant designated by the city may, from time to time, examine at the expense of the Authority, the accounts and books of the Authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operation, and affairs.

The Attorney General of the State may examine the books, accounts and records of any Authority.

§510. Competition in award of contracts

(a) All construction, reconstruction, repairs, or work of any nature made by any Authority, where the entire cost, value, or amount of such construction, reconstruction, repairs, or work including labor and materials, shall exceed $500, except reconstruction, repairs, or work done by employees of the Authority, or by labor supplied under agreement with any Federal or State agency with supplies and materials purchased as provided in this section, shall be done only under contract or contracts to be entered into by the Authority with the lowest and best bidder, upon proper terms, after due public notice has been given, asking for competitive bids as provided in this section. No contract shall be entered into for construction or improvement or repair of any project, or portion thereof, unless the contractor shall give an undertaking with a sufficient surety or sureties, approved by the Authority, and in an amount fixed by the Authority for the faithful performance of the contract. All such contracts shall provide, among other things, that the person or corporation entering into such contract with the Authority will pay for all materials furnished and services rendered for the performance of the contract, and that any person or corpo-

ration furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking, as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. Nothing in this section shall be construed to limit the power of the Authority to construct, repair, or improve any project or portion thereof, or any addition, betterment, or extension thereto directed by the officers, agents, and employees of the Authority or otherwise than by contract.

(b) All supplies and materials costing $500 or more shall be purchased only after due advertisement as provided in this section. The Authority shall accept the lowest bid or bids, kind, quality, and material being equal, but the Authority may reject any or all bids or select a single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market, or solely by a manufacturer's authorized dealer.

(c) The terms, advertisement or due public notice, wherever used in this section shall mean a notice published at least 10 days before the award of any contract in a newspaper of general circulation published in a municipality where the Authority has its principal office, and if no newspaper is published therein, then by publication in a newspaper of general circulation in the county where the Authority has its principal office.

(d) No member of the Authority or officer or employee thereof shall either directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with the Authority for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such Authority. If any contract or agreement shall be made in violation of the

provisions of this section the same shall be null and void and no action shall be maintained thereon against such Authority.

(e) Subject to the provisions of subsections (a)-(d) of this section any Authority may, but without intending by this provision to limit any powers of such Authority, enter into and carry out such contracts or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof as the Authority deems desirable, or as may be requested by any Federal agency that may assist in the financing of such project or any part thereof. The provisions of this section shall not apply to any case in which the Authority has taken over by transfer or assignment any contract authorized to be assigned to it under the provisions of section 515 of this title, nor to any contract in connection with the construction of any project which the Authority may have had transferred to it by any person or private corporation.

§511. Use of projects

The use of the facilities of the Authority and the operation of its business shall be subject to the rules and regulations from time to time adopted by the Authority. The Authority shall not do anything which will impair the security of the holders of the obligations of the Authority, or violate any agreements with them or for their benefits.

§512. Limitation of powers

The State of Delaware hereby pledges to and agrees with any person, firm or corporation, or Federal agency subscribing to, or acquiring the bonds to be issued by the Authority for the construction, extension, improvement, or enlargement of any project or part thereof, that the State

will not limit or alter the rights vested in the Authority until all bonds at any time issued, together with the interest thereon, are fully met and discharged. The State of Delaware further pledges to, and agrees with, the United States and any other Federal agency, that if any Federal agency constructs or contributes any funds for the construction, extension, improvement, or enlargement of any project, or any portion thereof, the State will not alter or limit the rights and powers of the Authority in any manner which would be inconsistent with the continued maintenance and operation of the project or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such Federal agency, and the Authority shall continue to have and may exercise all powers granted in this chapter, so long as the same shall be necessary or desirable, for the carrying out of the purposes of this chapter, and the purposes of the United States, in the construction or improvement or enlargement of the project or such portion thereof.

§513. Termination of Authority

When any Authority shall have finally paid and discharged all bonds, which, together with the interest due thereon, shall have been secured by a pledge of any of the revenues or receipts of a project, it may, subject to any agreements concerning the operation or disposition of such projects, convey such project to the city creating the Authority. When any Authority shall have finally paid and discharged all bonds issued and outstanding and the interest due thereon, and settled all other claims which may be outstanding against it, it may convey all its property to the city and terminate its existence. A certificate requesting termination of the existence of the Authority shall be filed in the office of the Secretary of State. If the certificate is approved by the city creating the Authority by

its ordinance or ordinances, the Secretary shall note the termination of existence on the record of incorporation and return the certificate with his approval shown thereon, to the board, which shall cause the same to be recorded in the office of the recorder of deeds of the county. Thereupon the property of the Authority shall pass to the city and the Authority shall cease to exist.

§514. Exemption from taxation; payments in lieu of taxes

The effectuation of the authorized purposes of the Authorities created under this chapter shall and will be in all respects for the benefit of the residents of incorporated cities for the increase of their commerce and prosperity, since such Authorities will be performing essential governmental functions and for the improvement of their health, safety, and living conditions, and, in effectuating such purposes, such Authorities shall not be required to pay any taxes or assessments upon any property acquired or used by them for such purposes. In lieu of such taxes or special assessments an Authority may agree to make payments to the city or the county or any political subdivision. The bonds issued by any Authority, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all time be free from taxation within this State.

§515. Transfer of existing facilities to Authority

(a) Any municipality or owner may sell, lease, lend, grant, or convey to any Authority any project, or any part or parts thereof, or any interest in real or personal property which may be used by the Authority in the construction, improvement, maintenance, or operation of any project. Any municipality may transfer, assign, and set

over to any Authority any contracts which may have been awarded by the municipality for the construction of projects not begun, or if begun not completed. The territory being served by any project, or the territory within which such project is authorized to render service at the time of the acquisition of such project by an Authority, shall constitute the area in which such Authority shall be authorized to render service.

(b) The Authority shall first report to and advise the city by which it was created of the agreement to acquire, including all its terms and conditions.

The proposed action of the Authority, and the proposed agreement to acquire, shall be approved by the city council. Such approval shall be by two-thirds vote of all of the members of the council.

(c) This section, without reference to any other law, shall be deemed complete for the acquisition by agreement of projects as defined in this chapter located wholly within or partially without the city causing such Authority to be incorporated, any provisions of other laws to the contrary notwithstanding, and no proceedings or other action shall be required except as prescribed in this section.